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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051869
Party	Plaintiff Corporacion Habanos, S.A. and Empresa Cubana del Tobacco d.b.a. Cubatabaco
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Submission	Motion for Default Judgment
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Date	03/09/2010
Attachments	Joya De Havana Motion for Default Judgment.pdf (3 pages)(22855 bytes)

In the matter of trademark Registration No. 2,912,374
Registered: December 21, 2004
Mark: H JOYA DE HAVANA HAND MADE & DESIGN

CORPORACION HABANOS, S.A., and EMPRESA)
CUBANA DEL TABACO, d.b.a. CUBATABACO,)
)
Petitioners,)
)
v.)
)
LEVY CAFE, INC.,)
)
Registrant.)

Cancellation No. 92051869

PETITIONERS' MOTION FOR DEFAULT JUDGMENT

Petitioners CORPORACION HABANOS, S.A. and EMPRESA CUBANA DEL TABACO (together "Petitioners"), by and through their undersigned counsel, hereby move for a default judgment against Registrant LEVY CAFÉ, INC. ("Registrant") in the above-captioned matter, pursuant to Fed. R. Civ. P. 55(c); 37 C.F.R. § 2.106(a); and TBMP §§ 312.01, 508, on the ground that Registrant has failed to file an Answer to Petitioners' Petition to Cancel Registration No. 2,912,374, H JOYA DE HAVANA HAND MADE & DESIGN, for "cigars made from Cuban seed tobacco," registered on December 21, 2004, which Answer was due no later than February 25, 2010, and in support thereof state as follows:

1. On December 17, 2009, Petitioners served and filed a Petition to Cancel Reg. No. 2,912,374. On December 17, 2009, the Board issued a scheduling order providing that Registrant's Answer was due by January 26, 2010.

2. On January 25, 2010, counsel for Registrant, Dechert LLP, filed a Motion for an Extension of Answer or Discovery or Trial Periods With Consent, resetting Registrant's time to Answer to February 25, 2010, which motion was granted on January 25, 2010.

3. Registrant did not file an Answer on or before February 25, 2010, still has not filed an Answer or any other document subsequent to its January 25, 2010 motion, nor has Registrant requested any additional time to Answer from either Petitioners or the Board.

4. Registrant, which indisputably has been on notice of this proceeding and the Answer deadline of February 25, 2010, has not made, and cannot make, any showing that good cause excuses its failure to file a timely Answer, or its continued failure to file an Answer to date, or otherwise to respond to the Petition to Cancel. *See* Fed.R.Civ.P. 55(c); 37 C.F.R. § 2.106(a); TBMP §§ 312.01, 508; *DeLorme Pub'g Co. v. Eartha's Inc.*, 60 U.S.P.Q.2d 1222 (T.T.A.B. 2000). Registrant is represented by a large and prominent law firm and cannot reasonably claim ignorance, carelessness, or negligence in failing to file a timely Answer.

5. Registrant's mark for "cigars made with Cuban seed tobacco," which do not come from Cuba, by use of the term "HAVANA," is, *inter alia*, primarily geographically deceptively misdescriptive under section 2(e)(3) of the Lanham Act, as more fully pleaded in the Petition to Cancel. *See Corporacion Habanos, S.A. v. Annas, Inc.*, 88 U.S.P.Q.2d 1785 (T.T.A.B. 2008) (refusing registration of mark HAVANA CLUB for cigars "made from Cuban seed tobacco" pursuant to section 2(e)(3)).

WHEREFORE, Petitioners request that: the Motion for Default Judgment be granted; a default judgment be entered against Registrant; and Registration No. 2,912,374 for H JOYA DE HAVANA HAND MADE be cancelled pursuant to 15 U.S.C. § 1064.

Dated: March 9, 2010

Respectfully submitted,

/David B. Goldstein/
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Motion for Default Judgment was sent by electronic mail, and was served on Registrant by mailing by first class mail, postage prepaid, said copy on March 9, to:

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/David B. Goldstein/
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